

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 559 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

BACHUBHAI MOPHANBHAI

Versus

STATE OF GUJARAT

Appearance:

MR AD SHAH for Petitioners

Mr. Y.F.Mehta, Addl.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 20/01/97

ORAL JUDGEMENT

The appellants who are father and son were facing charge of murder in Sessions case no. 22 of 1987 conducted before the learned Sessions Judge, Amreli. The prosecution case is that on the night of 13-14th of

November, 1986 between 7.00 p.m. to 7.00 7.00 a.m., the accused had killed Ravjibhai Nanjibhai and thrown his dead body into the well of a nearby field. From the aforesaid brief description of the incident, it is quite obvious that the case of the prosecution rests entirely on circumstantial evidence, which, in our opinion has been very ably summarised and enumerated in para 9 of the judgment of the trial court, which in the paper book is to be found at page nos. 264-265. It is an admitted position that the deceased had a land transaction with the accused appellant no.1 and there was an outstanding amount payable by the accused-appellant no.1 to the deceased. That is circumstance no.1. The second is that the deceased though belonging to some other village, was in fact, on the date of the event, in the village of the accused-appellant. No. 3 is that both the accused-appellant no.1 and the deceased were last seen together by the witness. Next circumstance is that after the event on the night of 13th November and 14th November, 1986, the dead body was found from the well of one Gobarbhai Thakersi's field. It is not in dispute that death of Ravjibhai Nanjibhai was homicidal and was caused by head injury which had proved fatal. His entire skull was crushed and there was corresponding damage to the brain as well.

2. No.6 is a circumstance which is peculiar to this case, namely cart track was found leading from the field of the accused to the said well from which dead body was found. The next circumstance is, there was similar grass found near the said well which is to be found in the field of the accused. Blood stains were found in the field of the accused. Blood stains were also found in drops all along cart track from the field of the accused to that of well of Gobarbhai Thakershi. One more circumstance important in the judgment is at item no. 13 of that paragraph where the shirt and "Chorni" i.e. lower garment both were found blood stained and that they belonged to the accused. Other circumstances relate to the so called discovery of the axe, seizure of cart said to be belonging to the accused, bullocks etc.

3. With regard to seizure of the cart, bullocks etc., the prosecution could not succeed in making out circumstances because the witness Manubhai happened to be the husband of the sister of the wife of the accused and therefore, he was not examined.

4. Now, coming back to the aforesaid

circumstances, when one looks at the evidence, it was contended before us by the learned advocate Mr. Shah that it is clear that being last seen together the prosecution has succeeded in making out the case. About the discovery, there is much that could be said against the prosecution case. The axe is said to have been recovered from the very house that the accused was residing and that came to be searched as per exh. 54 Panchnama on 17.11.86 at 8.00 or 8.30 a.m. While discovery from that very house on the same day as per exh. 56 panchnama is in the afternoon.

5. May be, after interrogating the accused, this information about axe may have been found. But when there is absence as to authorship, the entire exercise as rightly submitted by Mr. Shah would fall through.

6. However, the clinching material that could be found is lapse on the part of the prosecution and more particularly investigating agency as recorded in para 37 of the judgment.

7. It clearly refers to the fact that out of the two articles, i.e. Shirt and "Chorni", it was the shirt which was blood stained though it was found to be washed and for this, witness Somabhai Laxmanbhai p.w. 18, exh. 53 page 172 was read to us. There, in the cross-examination, it has been brought out that on the shirt, pencil marks were made and read alongwith the said para 37, it is quite clear that the shirt was marked which had blood stains, but it was never sent for the examination of the Forensic Science Laboratory. This has left most clinching evidence which the prosecution could have easily brought on record, totally inaccessible by the said lapse on the part of the investigating agency.

8. If this material was before the Court, it could have been determined with reasonable certainty, whether blood stains on the shirt connect the accused in any manner with the incident because blood stains ordinarily will be, as a result of bleeding of the deceased which looking to the nature of injuries the accused may have received on his wearing apparels and more particularly when the dead body after killing was put in a bullock cart and taken all the way to the said well.

9. In the result, what remains on record is that the accused and the deceased were last seen together and that the deed has been done in the field belonging to accused no. 1. Thereafter, straightaway, we find

undisputed fact of body being recovered from the well. These are no doubt very strong circumstances raising considerable suspicion against the accused no.1, but in criminal trial, mere suspicion is not enough and the prosecution has to travel the gap between "may" and "must". This being not the case here, the benefit will certainly go to the accused.

10. Incidentally, we may mention that so far whatever material we have discussed, there is no implication of accused no.1 at all and yet he has been convicted. So far as the accused no. 2 is concerned, we have no manner of doubt that he is entitled to clean acquittal.

11. The result is that the appeal succeeds. The accused-appellant gets benefit of doubt. The accused-appellant no.2 is acquitted. They are ordered to be set at liberty forthwith if not required in any other case. The learned Sessions Judge shall not insist upon execution of bond. The appeal is accordingly allowed.